

ASSURANCE OF VOLUNTARY COMPLIANCE and DISCONTINUANCE  
RESCUE HOME USA and VARTAN POLADIAN

STATE OF COLORADO ATTORNEY GENERAL'S OFFICE CONSUMER PROTECTION SECTION	
In re: RESCUE HOME USA  Respondents: RESCUE HOME USA, a California-based entity, and VARTAN ("VIC") POLADIAN, individually and as Managing Director of Rescue Home USA.	
JOHN W. SUTHERS, Attorney General ANDY P. McCALLIN, First Assistant Attorney General JENNIFER MINER DETHMERS, Assistant Attorney General  1525 Sherman Street, 7 <sup>th</sup> Floor Denver, CO 80203 Phone: (303) 866-5079 Fax: (303) 866-4916 Email: jennifer.dethmers@state.co.us	
<b>ASSURANCE OF VOLUNTARY COMPLIANCE AND DISCONTINUANCE WITH RESCUE HOME USA AND VARTAN ("VIC") POLADIAN</b>	

This Assurance of Voluntary Compliance and Discontinuance ("Assurance") is entered into between the State of Colorado, ex rel. John W. Suthers, Attorney General, Respondents Rescue Home USA and Vartan ("Vic") Poladian (collectively, "Respondents"). This Assurance is entered into pursuant to the Attorney General's powers under § 6-1-110(2), C.R.S. (2008), and is being agreed to by the parties in lieu of the Attorney General filing a complaint against Respondents for the conduct described below.

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**I. PARTIES**

1. John W. Suthers is the duly elected Attorney General for the State of Colorado (“Attorney General”) and has express jurisdiction to investigate and prosecute violations of the Colorado Consumer Protection Act (“CCPA”), §§ 6-1-101, *et seq.*, C.R.S. (2008).

2. Respondent Rescue Home USA (“Rescue Home USA”) is a California-based entity but is not registered with either the California Secretary of State or the Colorado Secretary of State. Rescue Home USA’s principal place of business is 18757 Burbank Blvd., Suite 205, Tarzana, California 91356. Rescue Home USA generates leads for loan modification companies.

3. Respondent Vartan (“Vic”) Poladian is the Managing Director of Rescue Home USA.

4. Respondents, including but not limited to employees, independent contractors, brokers, salespersons and/or agents of Rescue Home USA, have offered to negotiate or originate loan modifications for Colorado consumers.

**II. FACTUAL BACKGROUND**

5. Pursuant to the CCPA, Colorado Attorney General John W. Suthers has conducted an investigation into the advertising activities of Respondents.

6. The Attorney General contends that Respondents sent misleading and deceptive direct mail solicitations to Colorado consumers.

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**A. The Rescue Home USA Direct Mail Solicitation Appears To Come From Someone Other Than Respondents.**

7. The Rescue Home USA direct mail solicitation, a copy of which is attached hereto as Exhibit A, purports to be an official "Eligibility Notice." The top of the direct mail solicitation contains the words "FORM 892 ELIGIBILITY NOTICE" near the name of the consumer's lender. The solicitation assigns a disbursement code to the recipient and states that it is the "Final Notice." (*See Ex. A.*)

8. The outside of the "Eligibility Notice" contains the phrases "Homeowner Relief Plan" and "Stimulus Package Information Enclosed" above the recipient's address. (*Id.*) The solicitation, however, contains no information on any formal "Homeowner Relief Plan" or "Stimulus Package." The solicitation is simply an offer to modify the recipient's loan.

9. The name of the consumer's lender appears in large font in all capital letters in the upper left hand corner of the solicitation. While the name of the consumer's lender appears in all capital letters four (4) times in the solicitation, the only indication that this "Eligibility Notice" is coming from Respondents appears in a footnote in small font at the bottom of the solicitation. (*Id.*) Respondents do not indicate Rescue Home USA's address anywhere on the direct mail solicitation.

10. Respondents do not have the permission of the consumers' lenders to use the lenders' names in its advertising.

11. The Attorney General contends that the Rescue Home USA direct mail solicitation sent by Respondents to Colorado consumers in the form of Exhibit A is



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misleading and deceptive in that it appears to be an official notice containing information on a formal "Homeowner Relief Plan" and "Stimulus Package" when it does not. The solicitation also appears to come from someone other than the Respondents.

**B. The Rescue Home USA Direct Mail Solicitation Falsely Indicates That It Has Previously Attempted to Contact the Recipient.**

12. The Rescue Home USA direct mail solicitation states: "Our records indicate that you have not responded to our previous attempts to notify you of your eligibility to modify the terms of your existing mortgage." (*Id.*)

13. Respondents had not previously attempted to contact the recipient; instead, the solicitations in this direct mail campaign were part of a one-time test run to Colorado consumers.

14. The Attorney General contends that the Rescue Home USA direct mail solicitation sent by Respondents to Colorado consumers in the form of Exhibit A is misleading and deceptive in that it indicates that Respondents previously attempted to contact the consumer when they had not done so.

**C. The Rescue Home USA Direct Mail Solicitation Contains a Misleading Payment Rate and Does Not Comply With Regulation Z.**

15. The Rescue Home USA solicitation claims that the recipient's mortgage loan "is eligible to be **RESTRUCTURED** to a 5, 10, or 30 yr. fixed rate mortgage with a payment of only \$687.08 a month" on a loan amount of \$235,571. The solicitation also promotes fixed interest rates as low as 3.5%. (*Id.*)

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16. The monthly principal and interest payment for a \$235,571 loan at a 30-year fixed interest rate at 3.5% is \$1,057.82. The \$687.08 monthly payment advertised in the direct mail solicitation, however, is for an interest-only loan at an interest rate of 3.5%. Once the interest-only period expires, this monthly payment will increase to the fully-amortized payment.

17. The solicitation fails to disclose that the \$687.08 monthly payment (1) is an interest-only payment, (2) will increase once the interest-only period expires, and (3) does not include taxes and insurance.

18. Additionally, despite the fact that the Rescue Home USA direct mail solicitation advertises interest rates, it does not contain an Annual Percentage Rate ("APR") in violation of Regulation Z, 12 C.F.R. § 226.24.

19. The Attorney General contends that the Rescue Home USA direct mail solicitation sent by Respondents to Colorado consumers in the form of Exhibit A is misleading and deceptive in that it fails to disclose that the advertised monthly payment is an interest-only payment instead of a 30-year fully amortized payment and fails to state an APR.

**D. The Rescue Home USA Direct Mail Solicitation Improperly Offers to Modify the Recipient's Loan.**

20. Respondents offer to modify the recipient's loan when they state: "This offer to negotiate the current terms of your mortgage could allow you to reduce your monthly payments by 30% - 50% and may reduce your principal balance." The solicitation

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requests that the recipient “[c]all today to discuss how we can help you save your home.”

(*Id.*)

21. The direct mail solicitation contains a footnote in very small print with the following statements:

This is not a formal offer as eligibility depends on individual company information. No terms are implied and this is simply an offer for more information. . . . This is not an offer for a loan.

(*Id.*)

22. The Attorney General contends that the Rescue Home USA direct mail solicitation sent by Respondents to Colorado consumers in the form of Exhibit A is misleading and deceptive in that Respondents offer to modify the recipient’s mortgage loan in the text of the solicitation, but then attempt to disclaim that offer in a footnote. Persons cannot represent one thing in the text of an advertisement and then directly contradict that representation in a footnote in small print.

**E. Respondents Acted as Mortgage Brokers Without Proper Licenses.**

23. The Director of the Division of Real Estate has determined that “persons who directly or indirectly negotiate, originate *or offer or attempt to negotiate* or originate loan modifications for a borrower, and for a commission or other thing of value are required to be licensed as mortgage brokers.” (Ex. B, Division of Real Estate, Position Statement MB 1.5 – Loan Modifications, Nov. 19, 2008.) (Emphasis added.) Additionally, “persons who directly supervise individuals who negotiate, originate, *or offer or attempt to negotiate* or



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originate loan modifications for a commission or other thing of value are required to be licensed as mortgage brokers.” (*Id.*) (Emphasis added.)

24. Through these direct mail solicitations, Respondents or their agents offered to negotiate or originate loan modifications for Colorado borrowers.

25. Respondents, however, do not have employees or independent contractors who are licensed as mortgage brokers by the Colorado Division of Real Estate.

26. As such, the Attorney General contends that Respondents and their agents offered to negotiate or originate loan modifications without mortgage broker licenses in violation of §§ 6-1-105(1)(z) and 12-61-903(1)(a), C.R.S. (2008).

**F. Summary**

27. The Attorney General contends that the above misrepresentations and omissions of material facts are misleading and deceptive, may have caused significant financial harm to Colorado consumers, and have the potential to continue.

28. The Attorney General contends that these advertising and sales practices violate the CCPA, including but not limited to §§ 6-1-105(1)(b), (c), (e), (i), (u), (z), (uu), & (bbb) C.R.S. (2008).

**III. CONSIDERATION**

29. Respondents enter this Assurance as a compromise and settlement of the Attorney General’s allegations herein. This Assurance shall not be considered an admission of

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violation for any purpose. Respondents expressly deny liability under the CCPA and are entering into this Assurance to avoid further costs and litigation.

30. The Attorney General intends that this Assurance will finally and fully resolve all of the disputes between the Attorney General and Respondents arising out of the conduct alleged in Section II, Factual Background, of this Assurance.

**IV. ASSURANCES**

31. Respondents will not target advertisements directly to Colorado consumers.

32. The term "advertisements" includes all advertisements, marketing or promotional materials issued by Respondents, including but not limited to, newspaper and magazine advertisements, direct mail solicitations, flyers, brochures, emails, faxes, telemarketing, billboards, envelopes, and banner or pop-up advertising that is disseminated electronically.

33. Respondents shall comply with the CCPA as now constituted or as may be amended in conducting business in the State of Colorado; the federal Truth in Lending Act, 15 U.S.C. §§ 1601, *et seq.* ("TILA"); the Uniform Consumer Credit Code, §§ 5-1-101 through 5-13-105, C.R.S. (2008) ("UCCC"); and the Colorado Mortgage Broker Licensing Act, §§ 12-61-101, *et seq.*, C.R.S. (2008).

34. Respondents shall comply with all applicable rules and regulations implementing the laws set forth in the preceding paragraph as well as all Position Statements announced by the Director of the Colorado Division of Real Estate.

35. Within ten (10) business days of executing this Assurance, Respondents will provide



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the Colorado Attorney General with the names, company names, addresses, telephone numbers, and email addresses of all persons who assisted it in creating and/or disseminating the Rescue Home USA direct mail solicitation attached as Exhibit A.

36. Within ten (10) business days of executing this Assurance, Respondents will provide the Colorado Attorney General with the names, company names, addresses, telephone numbers, and email addresses of all persons to whom it sold or otherwise provided the names of Colorado consumers.

**V. ENFORCEMENT**

37. The obligations set forth in this Assurance are continuing under this Assurance.

38. A violation of any of the terms of this Assurance shall constitute a prima facie violation of the CCPA in accordance with § 6-1-110(2), C.R.S. (2008). Upon a violation of any of the terms of this Assurance by a Respondent, the Attorney General shall be entitled to file a civil action under the CCPA in any court of competent jurisdiction and to seek an injunction or other appropriate order from such court to enforce the provisions of this Assurance.

39. In addition to any remedies provided under the CCPA, the Attorney General shall be entitled to apply for and seek from a court of competent jurisdiction an order converting this Assurance into a permanent injunction against Respondents as if the parties had fully litigated all issues contained herein, upon a showing by the Attorney General of a violation by a Respondent of this Assurance. In such event, Respondents agree to waive any

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and all defenses and counterclaims they may have had to such an action, except as to claims or defenses related to the alleged violation of this Assurance or as to the need for injunctive relief.

40. This Assurance shall not be construed to affect the rights of any private party to pursue remedies pursuant to § 6-1-113, C.R.S. (2008), or under any other statutes through claims or actions in common law.

41. Nothing in this Assurance shall be construed to release claims held by any other governmental authority.

42. Pursuant to § 6-1-110(2), C.R.S. (2008), this Assurance shall be a matter of public record.

43. This Assurance may be executed in one or more counterparts, each of which shall be deemed to be an original, but which together shall constitute the Assurance.

44. The person who signs this Assurance in a representative capacity for Respondents warrants that he or she is duly authorized to do so. Respondents acknowledge that they have had a full opportunity to review this Assurance and consult with legal counsel regarding same. Respondents agree and represent that they have read and understand this Assurance, that they accept the legal consequences involved in signing it, and that there are no other representations, agreements or understandings between Respondents and the Attorney General that are not stated in writing herein.

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45. Respondents and their principals, officers, directors, agents, employees, representatives, successors, affiliates, subsidiaries, assigns, contractors, and any person acting on behalf of any Respondent agree to cooperate with all investigations and other proceedings that the Attorney General may bring to enforce the terms of this Assurance or to enforce the CCPA against any other entity. Included within this cooperation agreement are the obligations to:

- a) Appear for hearings, depositions or provide testimony in any form, including affidavits. All such testimony shall be truthful;
- b) Produce documents, records, electronic records, or any other tangible things in response to a subpoena or other written request issued by the Attorney General; and
- c) Accept a subpoena from the Attorney General without the need for service of process.

46. Any notices, complaints or other documents required by this Assurance (including any request or subpoena) shall be sent to the following individuals at the address, email or fax set forth below:

To Respondent Rescue Home USA:

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Email: vic@Amenfi.com  
Phone: 818 401.1431  
Fax: 818 583.1718



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To Respondent Vartan ("Vic") Poladian:

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Email: vic@Amenfi.com  
Phone: 818 491 1431  
Fax: 818 583 1718

To The Attorney General at:

Jennifer Miner Dethmers  
Assistant Attorney General  
Antitrust, Tobacco, and Consumer Protection Unit  
Consumer Protection Section  
1525 Sherman Street – 7<sup>th</sup> Floor  
Denver, CO 80203  
Email: [jennifer.dethmers@state.co.us](mailto:jennifer.dethmers@state.co.us)  
Phone: (303) 866-5079  
Fax: (303) 866-4916

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Dated: 7.7.09

RESPONDENT RESCUE HOME USA

By: Vartan Poladian  
Manager.  
Print Name and Title

Dated: 7.7.09

RESPONDENT VARTAN ("VIC") POLADIAN

  
\_\_\_\_\_

Dated: 6.25.09

JOHN W. SUTHERS  
Attorney General



JENNIFER MINER DETHMERS  
Assistant Attorney General  
Consumer Protection Section